IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9511 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

URMILA WD/O HARISH RAJARAM CHAUDHARY

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Ms. Banna Datta , learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 3-5-1999 passed by

respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that in all seven prohibition cases were registered against the petitioner at Amraiwadi police station in between 26-5-97 to 21-4-1999. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. That except three cases registered against the petitioner vide C.R.No : 5245/97, 5314/97 and 5074/98, remaining four cases are pending for investigation. Over and above that two witnesses vide their statement dated 24th April, 1999 and 25th April, 1999 respectively have stated the bootlegging activities of the petitioner on assurance of their anonymity. The witnesses have narrated the alleged incidents dated 4-4-1999 and 14-4-1999 respectively. That on the basis of the said material, respondent No.1 - The Commissioner of Police, Ahmedabad has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of the PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing her prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as while passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy like claiming cancellation of bail as available under Section 437 (5) of CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of ther Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by ther Court

(Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority has stated in penalty mate para that petitioner having got himself released on bail, is likely to continue her anti social activities and as such, the detention order under PASA is necessary. The said observation clearly suggests that the detaining authority has failed to consider the aspect of less drastic remedy and particularly in cases where the petitioner was released on bail which is pending for trial in the Court. In view of the said fact, it is difficult to uphold the said order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 3-5-1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - Smt. Urmil Wd/o Harish Rajaram Chaudhry is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

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